

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF  
ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2012-0563

IN THE MATTER OF  
CITY OF IONE  
WASTEWATER TREATMENT FACILITY  
AMADOR COUNTY

This Settlement Agreement and Stipulation for entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the Executive Officer of the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board), on behalf of the Central Valley Water Board Prosecution Team (Prosecution Team), and the City of Ione (Discharger) (collectively known as the Parties) and is presented to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60.

**Background**

1. On 26 May 1995, the Central Valley Water Board adopted Waste Discharge Requirements ("WDRs") Order 95-125 for a wastewater treatment and disposal facility owned and operated by Discharger.
2. On 11 July 2003, the Central Valley Water Board adopted Cease and Desist Order (CDO) R5-2003-0108 (the 2003 CDO) for the City of Ione. On 8 April 2011, the Board rescinded the 2003 CDO except for the purposes of enforcement, and adopted CDO R5-2011-0019 (the 2011 CDO) for the City of Ione.
3. Discharger's wastewater treatment facility (WWTF or facility) is in Amador County in Section 26, T6N, R9E, MDB&M. The WWTF accepts and treats domestic wastewater from the City of Ione, filter backwash water from a water treatment plant operated by Amador Water Agency, domestic wastewater from Preston Youth Authority's administration buildings, and although not permitted, filter backwash water from the Castle Oaks wastewater treatment plant. In addition, the Discharger accepts secondary effluent from Preston Reservoir for disposal in the WWTF's percolation/evaporation ponds.
4. The WWTF consists of seven ponds covering approximately 28 acres. The first four ponds provide secondary treatment via aeration and settling and the remaining three ponds provide disposal of treated effluent via percolation and evaporation. Neither the sixth nor the seventh pond is

permitted under the WDRs<sup>1</sup>. The WWTP is adjacent to Sutter Creek, with the closest pond approximately 100 feet from the Creek.

5. A January 2003 report submitted by the Discharger states that seepage was observed in Sutter Creek, at an estimated rate of 173 gallons/day. The report concludes that at times of very low flow, or no flow, there is the potential for groundwater to flow from the area underlying the wastewater treatment facility into the creek<sup>2</sup>. It is likely that this seepage contains constituents which are present as a consequence of the treatment and discharge of waste in unlined ponds<sup>3</sup>. The indirect discharge (seepage) may be in violation of the Clean Water Act<sup>4</sup> and the Prohibition A.1 of the WDRs.
6. Groundwater monitoring shows that the discharge of wastewater has polluted the groundwater underneath and downgradient of the facility. The main constituents of concern are iron and manganese. The background monitoring well contains iron at an average of 14 ug/l, while the downgradient wells contain iron at average of 3,600 ug/l. The secondary Maximum Contaminant Level for iron is 300 ug/l. A similar situation exists for manganese. The background well contains an average of 8 ug/l of manganese, while the downgradient well has an average of 5,800 ug/l as compared to the secondary maximum contaminant level of 50. This groundwater pollution is a violation of the WDRs.
7. It is unknown when the City constructed wastewater disposal Pond 6. However, wastewater disposal Pond 7 was constructed in the early 2000's. The City did not submit a Report of Waste Discharge (RWD) prior to the construction or use of either pond, which is a violation of WDRs Order 95-125 and the Water Code. Despite enforcement orders from the Board, the City has still not submitted an adequate RWD that would allow the pond to be permitted. However, the City continues to use Ponds 6 and 7 for wastewater disposal.
8. At times of the year, the shallow groundwater is close to ground surface in the vicinity of the WWTF. Board staff has received complaints of standing water in the vicinity of Pond 7. The City's 7 September 2010 report showed that the facility expansion proposed at that time would cause the local water table to rise to the ground surface during wet years at the southern end of the WWTF. In this case, wastewater would not be able to percolate and/or the surfacing groundwater could contain waste constituents, in violation of WDRs Order 95-125.

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<sup>1</sup> Finding No. 3 of the WDRs describes only five ponds.

<sup>2</sup> Finding No. 9 of CDO R5-2011-0019.

<sup>3</sup> Finding No. 19 of CDO R5-2011-0019.

<sup>4</sup> Item No. 2a of CDO R5-2011-0019.

9. Board staff learned about the construction of Pond 7 during an inspection in 2001, and subsequently instructed the City to submit a RWD and not dispose of any wastewater into the pond until the Board had revised WDRs Order 95-125. However, the City chose not to submit the RWD and began using the pond, in violation of the WDRs.
10. Subsequently, on 9 October 2001, the Executive Officer issued a Water Code Section 13267 Order for technical reports, which required that the City install groundwater monitoring wells and submit a complete RWD by 15 April 2002. The City installed the monitoring wells but did not submit the RWD.
11. In 2003, the Board adopted Cease and Desist Order R5-2003-0108, which was intended to bring the facility into compliance with the WDRs. This CDO addressed the three underlying compliance issues known at that time: groundwater pollution due to the disposal of wastewater, seepage of polluted groundwater into Sutter Creek, and the construction and use of an unpermitted disposal pond.
12. The 2003 CDO required that the City complete its Wastewater Master Plan by November 2004 and then submit a RWD within 60 days of staff's approval of the Master Plan. The City submitted a Master Plan in November 2004, but then informed staff that it was only preliminary. In 2009, the City submitted a draft Master Plan. A final Master Plan was submitted in March 2010, over five years delinquent. However, the 2010 Master Plan still did not comply with the 2003 CDO because it did not demonstrate that the proposed facility improvements would prevent seepage of polluted groundwater into Sutter Creek, nor did it include measures to prevent continued groundwater pollution.
13. The City submitted its first RWD in November 2005, and submitted revisions in 2006, March 2010, and September 2010. However, the RWD submittals did not address the underlying compliance issues, and therefore did not comply with the CDO.
14. The City's March 2010 RWD proposed to increase the treatment and disposal capacity, to replace the existing secondary treatment facility with a tertiary treatment and UV disinfection system, to close the four existing treatment ponds, and to construct a fourth percolation disposal pond (referred to as Pond 8).
15. Board staff reviewed the March 2010 RWD and found that it insufficient to remedy the continuing violations (polluted groundwater, seepage of polluted groundwater into the Creek, and surfacing groundwater). In a letter dated 28 June 2010, Water Board staff stated that the March 2010 RWD was incomplete due to the potential for leakage from Pond 7 into adjacent ditches, surfacing of effluent adjacent to the proposed Pond 8, and

wastewater seepage from Ponds 5 and 6 to Sutter Creek. In addition, staff stated that the RWD did not demonstrate that the changes would result in any improvement to the groundwater. Staff's letter provided a list of additional information that was required to be submitted. The City did not submit the information, and Water Board staff issued a Notice of Violation on 17 August 2010 because the RWD was still incomplete, in violation of the 2003 CDO.

16. The City submitted a revised RWD in September 2010, which included the results of a groundwater flow model for the planned expansion. The report concluded that surfacing of groundwater may occur seasonally near the southern edge of proposed disposal Pond 8. Staff had some questions regarding the model, and requested additional information.
17. On 5 October 2010, the City submitted the results of a second numeric groundwater model for the planned expansion. This model included extraction of groundwater along the southern edge of the percolation ponds in order to control surfacing groundwater, and disposal of the extracted groundwater in the percolation ponds. Although the report stated that the City could mitigate surfacing groundwater by pumping groundwater to the percolation ponds, the RWD's capacity analysis did not account for the additional influent flows, and the seepage to the creek was not addressed. The September 2010 RWD did not propose a system that would mitigate the continuing violations of the WDRs. On 5 November 2010, staff again informed the Discharger that the September 2010 RWD was incomplete, and the City remained in violation of the 2003 CDO.
18. In early 2011, the Executive Officer and the Prosecution Team evaluated whether it would be more appropriate to issue an Administrative Civil Liability (ACL) Complaint for the City's failure to comply with the 2003 CDO or to propose a new CDO with new timelines. The City had been in violation of its WDRs since 2001 and never complied with its 2003 CDO because it has been unable to commit to a course of action to prevent groundwater pollution or seepage of the polluted wastewater into Sutter Creek. In addition, the City continued to discharge wastewater to two unpermitted ponds in violation of WDRs Order 95-125 during the entire eight year period.
19. If an ACL Complaint had been issued, the maximum penalty could have easily exceeded \$11 million. However the City asked for one more chance to comply, and proposed new timelines. The Prosecution Team determined that the timelines were reasonable, and that the goal of the enforcement action was to compel the City to upgrade its treatment plant to address the four main issues described in Findings 5-8, above. Therefore, the Prosecution Team prepared a new CDO for consideration at the Water Board's April 2011 meeting.

20. On 8 April 2011, the Water Board adopted the CDO R5-2011-0019, but only after questioning why an ACL Complaint hadn't been prepared, and only after assurances by Lone's City Manager and a City Council member that the City would comply with the new deadlines.
21. The CDO R5-2011-0019 requires that the City of Lone:
  - a. Submit a *Seepage Discharge Compliance Plan* by 30 January 2012;
  - b. Submit a complete Report of Waste Discharge by 30 May 2012; and
  - c. Document that the wastewater treatment plant improvements have been completed by 30 October 2013.
22. The Lone City Manager resigned in June 2011. An interim City Manager was hired to lead the search for a new City Manager, who began working in August 2012. In 2011, the City Council also hired a new City Attorney and contracted with a different engineering consultant to complete the *Seepage Discharge Compliance Plan*. These parties determined that the former consultant's proposal (described in the March through September 2010 RWDs) was too expensive, and subsequently developed and submitted a new concept.
23. The City submitted the *Seepage Discharge Compliance Plan* on time. As required by the CDO, the Plan contains a conceptual design to address seepage to Sutter Creek, groundwater pollution, surfacing wastewater, and capacity. In summary, staff determined that the City may have outlined a mechanism to bring the treatment plant into compliance with the WDRs and CDO, but that additional information was needed. Staff required that an addendum be submitted by 16 March 2012, and that additional information be presented in the 30 May 2012 RWD.
24. The *Seepage Discharge Compliance Plan Addendum* was submitted on 28 February 2012 by the consultant who prepared the *Plan* but whose contract had not been renewed by the City. This consultant stated that, at times, there would not be enough capacity at the tertiary treatment plant to treat all of the secondary wastewater, and that another - yet to be hired - consultant would address Board staff's concerns and prepare a new schedule to complete the RWD.
25. In late January 2012, Board staff became aware that progress towards complying with the 2011 CDO had come to a halt. At recent City Council meetings, two agenda items were not approved; these items directly impacted the City's compliance with the CDO timeline. First, an extension of the wastewater engineering consultant's contract to prepare the RWD and to continue as the project manager was not approved, and secondly, a contract to prepare a preliminary design report and to seek funding through the State Revolving Fund process was not approved. In addition, the ratepayers stated at the public meetings that they did not want to pay for

engineering consultants, and decided that they would form a "citizen's committee" to design the wastewater plant. Further, on 10 February 2012, Board staff was informed that the consultant had withdrawn its proposal to develop a RWD and provide project management services.

26. In February 2012, several City of Ione residents addressed the Board during the Public Forum section of the Water Board meeting. The residents expressed their concerns about wastewater issues and the CDO. In response, the Board asked that the Prosecution Team bring the matter to a future meeting for discussion.
27. In April 2012, the Water Board held a hearing to reconsider the timelines in the 2011 CDO. The City of Ione requested additional time to submit the RWD and complete the facility improvements, stating that it needed to hire a new consultant, garner public support for a Proposition 218 process to raise rates, and to address a recall campaign against several City Council members. However, the Board declined to consider the City's requested changes to the 2011 CDO.
28. The 2011 CDO requires that the City of Ione submit a Report of Waste Discharge by 30 May 2012. The City submitted a document on 30 July 2012, but staff's review found that it does not meet the criteria of the CDO. Therefore, the City has failed to meet its obligation to submit the Report of Waste Discharge required by the 2011 CDO.

### **Regulatory Considerations**

29. As described in the above Findings, the Discharger has violated CDO R5-2011-0019 by failing to submit a Report of Waste Discharge. As of 3 September 2012, the RWD is 66 days late. The Regional Water Board may assess administrative civil liability based on CWC Section 13350 for violations of the CDO.
30. Water Code Section 13350(e) states: *"The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both."*
31. Water Code Section 13350(e)(1) states: *"The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs."*
32. Water Code Section 13350(e)(1)(B) states: *"When there is no discharge, but an order issued by the regional board is violated... the civil liability shall be not less than one hundred dollars (\$100) for each day in which the violation occurs."*

33. Water Code Section 13350(f) states: *"A regional board may not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its actions based upon the specific factors required to be considered pursuant to Section 13327."*
34. Water Code Section 13327 states: *"In determining the amount of civil liability, the regional board.....shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters as justice may require."*
35. For the 66 days of violation of the CDO cited in paragraph 29 above, the maximum administrative civil liability that can be imposed by the Central Valley Water Board under Water Code Section 13350 is \$5,000 per day. The minimum civil liability under Water Code Section 13350 is \$100 per day. As of 3 September 2012, the Discharger has violated the CDO for a total of 66 days. Therefore, the maximum administrative civil liability is \$330,000 and the minimum administrative civil liability is \$6,600.

### **Settlement**

36. On 10 September 2012, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint (ACLC) R5-2012-0558 to the Discharger for \$143,552. The Parties thereafter engaged in settlement negotiations and have agreed to settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the Central Valley Water Board, or its delegate, for adoption as an order by settlement pursuant to Government Code section 11415.60. The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged in the ACLC and that this Stipulated Order is in the best interest of the public.
37. The Parties have agreed to adjust three of the penalty calculation factors, as described in Attachment A to this Order. The basis for these factors is found in the State Water Resources Control Board's *Water Quality Enforcement Policy*.

38. To resolve the violations alleged in the ACLC by consent and without further administrative proceedings, the Parties have agreed to the imposition of \$123,818 in liability against the Discharger. Consistent with the *Water Quality Enforcement Policy*, up to 50% of that amount can be dedicated toward an Enhanced Compliance Action. Therefore, the Parties have agreed that \$61,909 of the total liability (50%) will be allocated to an ECA, as described in Attachment B. In addition, the Discharger shall pay a total of \$61,909 to the State Water Resources Control Board's Cleanup and Abatement Account. Of that amount, approximately \$20,000 consists of staff costs and the balance is stipulated penalties.

### Stipulations

The Parties stipulate to the following:

1. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling **one hundred twenty three thousand eight hundred eighteen dollars (\$123,818)**. Of this amount:
  - a. **Sixty one thousand nine hundred and nine dollars (\$61,909)**, shall be paid into the Cleanup and Abatement Account. These payments may be made in two equal installments, the first to be made not later than 28 February 2013, and the second no later than 30 August 2013. Each check, in the amount of \$30,954.50, should be made payable to the *State Water Pollution Cleanup and Abatement Account*, and shall indicate on the check the number of this Order. The Discharger shall send the original signed check to Julie Macedo, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812. A copy of the check shall be sent to Wendy Wyels, Regional Water Quality Control Board, Central Valley Region, 11020 Sun Center Drive Suite 200, Rancho Cordova, CA 95670.
  - b. The remaining liability of **sixty one thousand nine hundred and nine dollars (\$61,909)** shall be permanently suspended pending timely completion of the work, and submittal of the reports, described in Attachment B, *Enhanced Compliance Action*. The reports must document completion of the required tasks at a cost of at least \$61,909. If less than \$61,909 is spent on the project, then the Discharger shall submit the difference no later than 1 November 2013.
2. **Agreement of Discharger to Fund, Report, and Guarantee Implementation of ECA:** The Discharger represents that: (1) it will fund the ECA in the amount as described in this Stipulation; (2) it will provide certifications and written reports to the Central Valley Water Board consistent with the terms of this Stipulation detailing the implementation of the ECA; and (3) will guarantee implementation of the ECA by remaining



liable for the entire cost of the ECA until it is completed and accepted by the Central Valley Water Board in accordance with the terms of this Stipulation. The Discharger agrees that the Central Valley Water Board has the right to require an audit of the funds expended by it to implement the ECA.

3. **Oversight of ECA:** The Discharger is solely responsible for paying for all oversight costs incurred to oversee the ECA. The ECA oversight costs are in addition to the total administrative civil liability imposed against the Discharger and are not credited toward the Discharger's obligation to fund the ECA.
4. **Publicity:** Should Discharger or its agents or subcontractors publicize one or more elements of the ECA, they shall state in a prominent manner that the project is being partially funded as part of the settlement of an enforcement action by the Central Valley Water Board against the Discharger.
5. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject it to further enforcement, including additional administrative civil liability.
6. **Party Contacts for Communications related to Stipulated Order:**  
  
For the Regional Water Board:  
Wendy Wyels  
Regional Water Quality Control Board  
Central Valley Region  
11010 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670  
  
For the Discharger:  
City of Lone  
Attn: City Manager  
1 E. Main Street  
P.O. Box 398  
Lone, CA 95640
7. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
8. **Matters Addressed by Stipulation:** Upon the Central Valley Water Board's, or its delegee's, adoption of this Stipulated Order, this Order

represents a final and binding resolution and settlement of the violations alleged in the ACLC pursuant to Water Code sections 13323, 13350 and 13385. The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability, in accordance with Stipulation Paragraph 1 herein.

9. **Public Notice:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Central Valley Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption, the Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Central Valley Water Board, or its delegee. The Discharger agrees that it may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.
10. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Central Valley Water Board's adoption of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
11. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Central Valley Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Team or Central Valley Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.
12. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
13. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Central Valley Water Board.
14. **If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Central Valley Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Valley Water Board to

determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Central Valley Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Valley Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
  - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.
15. **No Admission of Liability:** In settling this matter, the Discharger does not admit to any of the findings in the ACLC, this Stipulated Order, or that it has been or is in violation of the Water Code, or any other federal, state, or local law or ordinance; however, the Discharger recognizes that this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327.
  16. **Waiver of Hearing:** The Discharger has been informed of the rights provided by CWC section 13323(b), and hereby waives its right to a hearing before the Central Valley Water Board prior to the adoption of the Stipulated Order.
  17. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Central Valley Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
  18. **Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, its officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.
  19. **Central Valley Water Board is Not Liable:** Neither the Central Valley Water Board members nor the Central Valley Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Discharger, its directors,

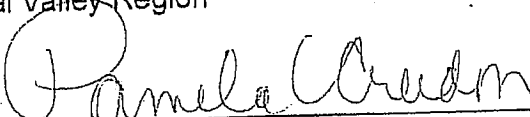
officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

20. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
21. **No Third Party Beneficiaries.** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
22. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Central Valley Water Board, or its delegee, enters the Order.
23. **Counterpart Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

**IT IS SO STIPULATED.**

California Regional Water Quality Control Board Prosecution Team  
Central Valley Region

By: \_\_\_\_\_

  
Pamela C. Creedon  
Executive Officer

Date: \_\_\_\_\_

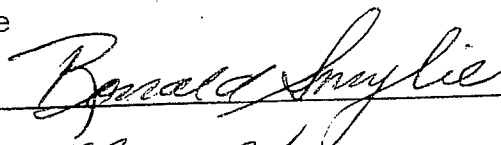
11/13/2012

City of Ione

By: \_\_\_\_\_

Title: \_\_\_\_\_


Date: \_\_\_\_\_

  
Mayor  
12/4/12

### Order of the Central Valley Water Board

1. In adopting this Stipulated Order, the Central Valley Water Board or its delegee has considered, where applicable, each of the factors prescribed in CWC sections 13327 and 13385(e). The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board's staff in investigating the allegations in the Complaint or otherwise provided to the Central Valley Water Board or its delegee by the Parties and members of the public. In addition to these factors, this settlement recovers the costs incurred by the staff of the Central Valley Water Board for this matter.
2. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The Central Valley Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.
3. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the Central Valley Water Board.

Pursuant to CWC sections 13323, 13350, 13385 and Government Code section 11415.60, **IT IS HEREBY ORDERED** by the California Regional Water Quality Control Board, Central Valley Region.

By:   
Kenneth D. Landau  
Assistant Executive Officer

Date: 10 January 2013

Attachment A: Penalty Calculation Methodology  
Attachment B: Enhanced Compliance Action

**ATTACHMENT A to SETTLEMENT AGREEMENT AND STIPULATION**  
**ACL Order R5-2012-0563**  
**City of Lone Wastewater Treatment Plant**  
**Analysis of Enforcement Policy Penalty Methodology**

The City of Lone has violated the CDO R5-2011-0019 by failing to submit a Report of Waste Discharge. As of 3 September 2012, the RWD is 66 days late. The Central Valley Water Board may assess administrative civil liability based on California Water Code Section 13350 for violations of the CDO.

CWC sections 13327 and 13385(e) require the State Water Board and Regional Water Boards to consider several factors when determining the amount of civil liability to impose. These factors include in part: "...the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup and abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require."

On 17 November 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy ("Enforcement Policy"). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in CWC sections 13327. The entire Enforcement Policy can be found at:  
[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final11179.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final11179.pdf).

This attachment summarizes the Prosecution Team's selected factors, also presented with the ACLC when it was issued, and the ultimately selected factors agreed upon by the Parties (the Prosecution Team and the City of Lone) through settlement negotiations.

**Steps 1 and 2 – Potential for Harm for Discharge Violations; Assessments for Discharge Violations**

For this case, the violation is the failure to submit the Report of Waste Discharge. Although the wastewater treatment plant ponds continue to cause polluted groundwater to seep into Sutter Creek and continue to cause pollution of the underlying groundwater, Board staff elected not to pursue a penalty based on these discharges of waste. Therefore, the first two steps of the Penalty Calculation methodology do not apply.

**Step 3 – Per Day Assessment for Non-Discharge Violation**

The Enforcement Policy states that the Board shall calculate an initial liability for each non-discharge violation. For this case, the non-discharge violation is the failure to submit a Report of Waste Discharge by the date required by the 2011 CDO (i.e., 30 May 2012) through 3 September 2012, for a total of 66 days.

- A. Potential for Harm. According to the Enforcement Policy, most incidents would be considered to have a "moderate" potential for harm. However, because this Complaint only considers violations of the 2011 CDO, the Parties agreed during settlement discussions that the City of Ione's failure to submit a Report of Waste Discharge could be assigned a "minor" factor because there may have been only a minimal impact to beneficial uses during the 66 days of non-submittal of the RWD.
- B. Deviation from Requirement. Because this Complaint only considers violations of the 2011 CDO, the failure to submit a complete RWD by 30 May 2012 was assigned a "minor" Deviation from Requirement. The City has recently submitted a revised RWD on 30 September 2012. However, as stated above, if violations of the 2003 CDO were also considered, then the "Deviation from Requirement" factor would be substantially higher.
- C. Per Day Factor. The "per day factor" is found on Table 3 of the Enforcement Policy. A factor of either 0.1 or 0.2 may be selected for a minor Potential to Harm and a minor Deviation from Requirement. The Parties agreed to continue using the **0.2** factor.

The Per Day Assessment is the "per day factor" (0.2) multiplied by the maximum per day amount authorized under the California Water Code (i.e., \$5,000 per day, as found in Water Code Section 13350) multiplied by the number of days of violation.

The Initial Liability is  $0.2 \times \$5,000 \times 66 \text{ days} = \$66,000$

The Enforcement Policy allows a reduction for multiple day violations. In order to do so, the Water Board must make three express findings. While the City of Ione may be able to make such a finding, the Parties did not specifically address this.

#### **Step 4 – Adjustment Factors**

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to cleanup or cooperate with regulatory authority, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

##### Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for intentional or negligent behavior. The Discharger was given a multiplier value of **1.3**. Since at least the year 2000, the City has intentionally taken actions in violation of its WDRs and two CDOs. These actions include construction of additional percolation basins not allowed by the WDRs, and the failure to plan and construct facility improvements to prevent the pollution of groundwater and the seepage of that groundwater into Sutter Creek. In regard to the 2011 CDO, the City submitted the required *Seepage Discharge Compliance Plan*, which was intended to provide a high-level

discussion of the facility improvements which would lead to compliance with the CDO. Water Board staff had minor comments on the *Plan*, and expected that the City would respond in the RWD. However, the City elected to change course and submitted a RWD which not only substantially deviates from the *Plan* and but does not provide certainty that the proposed improvements will result in compliance with the CDO. (Further information is found in Water Board staff's *Review of Report of Waste Discharge* dated 21 August 2012, which is Attachment D of the ACL Complaint.)

#### Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. The City of Lone was assigned a multiplier value of 1.2 when the ACLC was issued. The concept of "cleanup" does not apply to this case; it is more applicable in the case of a sewage spill. Therefore, Water Board staff reviewed the City's cooperation in returning to compliance with the WDRs. If the City's conduct since 2000 was taken into account, then the multiplier would have been higher. However, because the only violation of the 2011 CDO is the failure to submit a complete Report of Waste Discharge, the Parties agreed during settlement to reduce the Cleanup and Cooperation factor to **1.1**.

#### History of Violation

The Enforcement Policy states that a minimum multiplier of 1.1 should be used when there is a history of violations. As described in the Findings of the ACL Complaint, the Discharger has a long history of violations of its WDRs, the 2003 CDO, and the 2011 CDO. If this Complaint were to consider the City's violations since 2000, then a large multiplier would be appropriate. However, because only violations of the 2011 CDO are considered, the ACL Complaint used a multiplier factor of 1.2. The continued failure to submit a complete RWD jeopardizes the City's ability to fund the as-yet-unknown project, and jeopardizes the City's ability to meet the CDO's 30 October 2013 date for full compliance. During settlement, the Parties agreed to a multiplier of **1.1** because the non-submittal of the Report of Waste Discharge is the only violation of the 2011 CDO.

#### Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 3.

**Total Base Liability Amount:** This value is calculated as the Initial Liability Amount (\$66,000) x Adjustment Factors (1.3) (1.1) (1.1) and is equal to \$103,818.

#### Step 6 - Ability to Pay and Ability to Continue in Business

The Central Valley Prosecution Team set forth information about Discharger's ability to pay in the ACLC. Ability to pay is an affirmative defense that Discharger is waiving by entering into this settlement agreement.



### **Step 7 – Other Factors as Justice May Require**

If the Central Valley Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for "other factors as justice may require," but only if express findings are made to justify this.

### **Costs of Investigation and Enforcement Adjustment**

The costs of investigation and enforcement are to be considered as "other factors as justice may require" under the Enforcement Policy, and should be added to the liability amount. Over the past year, staff of the Central Valley Water Board has spent over 135 hours associated with the compliance with the 2011 CDO and preparation of this enforcement action. The State Water Board Office of Enforcement has directed that all regions are to use a value of \$150 per hour for staff costs. For this case, staff time through preparation of the Complaint is \$20,000. The Enforcement Policy recommends that staff costs be added to the liability amount, and the stipulated penalty reflects that these costs will be recovered.

### **Step 8 – Economic Benefit**

The Porter-Cologne Act requires that certain civil liabilities be set at a level that accounts for any "economic benefit or savings" violators gained through their violations. To establish the amount of civil liabilities, the Office of Enforcement uses a "Penalty Calculation Methodology" that addresses the economic benefit of noncompliance.<sup>1</sup>

The U.S. Environmental Protection Agency developed the BEN computer model to calculate the economic benefit a discharger derives from delaying and/or avoiding compliance with environmental regulations.<sup>2</sup> The BEN model was used in calculating the economic benefit derived by NBRID of not complying with existing environmental regulations and requirements.

Economic benefit represents the financial gains that a violator accrues by delaying and/or avoiding expenditures to meet mandated pollution control requirements. Funds not spent on environmental compliance are available for other profit-making activities or, alternatively, a defendant avoids the costs associated with obtaining additional funds for environmental compliance. Economic benefit represents the amount by which a defendant is financially better off from not having complied with environmental requirements in the specified timeframe. The appropriate economic benefit calculation should represent the amount of money that would make the violator indifferent between compliance and noncompliance. If the civil penalty does not recover at least this economic benefit, then the violator will retain an economic gain and have no financial incentive to comply. Because of the precedent of this retained gain, other regulated companies may see an economic advantage in similar noncompliance, and the penalty will fail to deter potential violators.

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<sup>1</sup> Water Quality Enforcement Policy, Office of Enforcement, State Water Resources Control Board, November 17, 2009, Page 9.

<sup>2</sup> BEN Version 4.6.0 was developed under the direction of Jonathan Libber, BEN/ABEL Coordinator, Office of Enforcement and Compliance Assurance, U.S. EPA. Technical assistance provided to EPA by Industrial Economics, Incorporated (IEc), Cambridge, MA. <http://www.epa.gov/compliance/civil/econmodels/>

Economic benefit does not represent compensation to the enforcement agency as in a typical "damages" calculation for a tort case, but instead is the minimum amount by which the violator must be penalized so as to return it to the financial position it would have been in had it complied on time.

The BEN model calculated an economic benefit of at least \$394 for not submitting the Report of Waste Discharge on time. This is based on the assumption that the cost of preparing the report is \$50,000, a noncompliance date of 30 May 2012, a compliance date of 3 September 2012, and a penalty payment date of 1 January 2013. The standard conditions and assumptions specified in BEN were employed in the analysis.

The Enforcement Policy states (p. 21) that the total liability shall be at least 10% higher than the economic benefit, "so that liabilities are not construed as the cost of doing business and the assessed liability provides a meaningful deterrent to future violations." For this case, this would result in a minimum liability of at least \$440.

#### **Final adjusted liability**

After adding staff costs, the final adjusted liability amount is \$123,818. This is greater than the assumed economic benefit plus 10%, and higher than the minimum liability set by Water Code section 13350.

#### **Step 9 – Maximum and Minimum Liability Amounts**

The maximum and minimum amounts for discharge violation must be determined for comparison to the amounts being proposed. These values are calculated in the ACL Complaint, and the values are repeated here.

Maximum Liability Amount: \$330,000 (per Water Code section 13350)

Minimum Liability Amount: \$6,600 (per Water Code section 13350)

#### **Step 10 – Final Liability Amount**

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided amounts are within the statutory minimum and maximum amounts. The Administrative Civil Liability Complaint proposed a liability of \$143,552. However, given the staff time to prepare for a Board hearing, and the need to devote resources toward (a) reviewing the recently submitted Revised Report of Waste Discharge and (b) preparing Waste Discharge Requirements to allow the City to implement its proposed improvements, the Parties agree that it is appropriate to slightly reduce the penalty. As described in this document, the settlement reduction and stipulated penalty amount is \$123,818.

**Attachment B  
Settlement Agreement and Stipulation for Order  
ACL Order R5-2012-0563**

**ECA Project Description**

**Project Title:** Preston Ave. Sewer Slip Lining Project – Phase 2

**Geographic area of interest:** City of Lone, Amador County

**Name of responsible entity:** City of Lone

**Estimated cost for project completion:** \$74,900

**Contact Information:**

Ed Pattison  
City Manager  
City of Lone  
1 East Main Street  
Lone, CA 95640  
(209) 274-2412

**Brief description of the project:**

The City of Lone will make improvements to a portion of the sewer collection system in Preston Ave. (identified as a high priority project from the sewer system evaluation in 2011.) This project will consist of slip lining approximately 1,398 feet of 6-inch sewer main in Preston Avenue. The existing pipe is in poor condition as identified in recent CCTV video of this sewer main. The section of sewer line to be replaced with this project has a significant amount of root intrusion and inflow/infiltration. Phase 1 of this project was constructed in 2011 and involved removal and replacement of failed sections of the sewer main in Preston Ave. This second phase project involves the completion of repairs on the highest priority line in the City as identified in the sewer system evaluation. This project will eliminate inflow and infiltration from entering this section of the collection system and will significantly reduce maintenance time and expenses to maintain this section of the collection system.

**Water body, beneficial use and/or pollutant addressed by this project:**

The project will take place in the City of Lone, which operates a wastewater treatment plant in the City. The current WWTP has evaporation/percolation ponds where treated wastewater is discharged. The project will reduce the amount of flows (through a reduction of inflow/infiltration), thereby reducing environmental impacts in the area of the City's evaporation/ percolation ponds. Reduced flows will help the City properly maintain ponds 5-7 by allowing the ponds to be emptied each summer. This maintenance, along with other measures described in the City's Report of Waste Discharge, should reduce or eliminate the mobilization of iron and manganese into shallow groundwater and Sutter Creek.

**Project schedule, budget, and deliverables:**

The City of Lone will be responsible for providing all deliverables described below for each phase of the project.

1. Construction Documents. The City of Ione will enter into contract with the City Engineer to complete the design of the improvements and will complete all bid documents for the project no later than January 31, 2013.

- Deliverable: Bid Documents
- Due Date: **31 January 2013**

2. Bidding. The City of Ione will advertise and bid the project during the month of February 2013. Assuming the City obtains responsive bids and a responsible contractor, the award of the construction contract will be approved by the City Council in March 2013. As this is a non-invasive construction project that is repairing existing facilities, the environmental clearance on this project is anticipated to be categorical exclusion and will be processed at the time of the award of the construction contract.

- Deliverable: Executed Contract
- Due Date: **March 2013**

3. Construction. Construction is anticipated to begin in early to mid-April and be completed by the end of April 2013. Acceptance of the project and the approval of the Notice of Completion should take place in May 2013.

- Deliverable: Notice to Proceed
- Due Date: **April 2013**

Estimated Construction Cost: \$74,900. Estimated Construction timeframe: 3 weeks.

- Deliverable: As-Built plan set and project acceptance by the City Council.
- Due date: **1 June 2013**. Note that the final deliverable is based on the assumption that construction goes smoothly and no significant delays are encountered.

4. Final Report. The final report will include a summary of all tasks completed and a post-project accounting of all expenditures. The accounting must clearly show whether the final cost of the successfully completed ECA is less than, equal to, or more than the suspended liability of \$61,909. The report must be completed under penalty of perjury.

- Deliverables: Final Report including the above information and As-Built Plans; Summary of Tasks Completed and Post-Project Accounting with Invoices
- Due date: **31 July 2013**